

Thomas E Lauria  
State Bar No. 11998025  
Craig H. Averch  
State Bar No. 01451020  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
Telephone: (214) 651-5000  
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

_____	)	
In re	)	Chapter 11 Case
	)	
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590 (DML)
	)	Jointly Administered
Debtors.	)	
_____	)	

**MOTION OF DEBTORS TO REJECT THE LEASE AGREEMENT WITH  
SOUTHFIELD INDUSTRIAL III, L.P.**

Mirant Corporation (“Mirant”) and its affiliated debtors (collectively, the “Debtors”), as debtors in possession, file this Motion (the “Motion”) pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) for authority to reject the “Lease Agreement” (the “Lease”) between Southfield Industrial III, L.P., as landlord

(the “Landlord”) and Mirant, as tenant,<sup>1</sup> which is described below in greater detail and attached hereto as Exhibit B.<sup>2</sup> In support thereof the Debtors represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), the Debtors filed voluntary chapter 11 petitions and manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases.

**RELIEF REQUESTED**

5. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Lease listed below in paragraph 8 hereof, effective ten (10) business days from the date of service of this Motion.

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<sup>1</sup> At the time the Lease was executed, Mirant was known as Southern Energy, Inc. (“Southern”). Southern subsequently changed its legal name to Mirant Corporation.

<sup>2</sup> Not all parties were served with the Lease. Any party may request a copy of the Lease by making a written request to the Debtors’ counsel.

## **BASIS FOR RELIEF**

6. On August 14, 2003, the Court entered an amended order (the “Order”) approving procedures (the “Rejection Procedures”) for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

7. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors’ ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

8. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Lease will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the “Effective Date”):

- (a) **Title of the Lease:** “Lease Agreement” between Landlord and Mirant, dated July 2, 1999, for premises situated in the Southfield Corporate Center, 105 Southfield Parkway, Atlanta Georgia (the “Premises”).

**Effective Date of Rejection:**

April 1, 2004, subject to paragraph 9 hereof

**Parties to the Lease:**

Southfield Industrial III, L.P.  
Mirant Corporation

Contact Information for Non-Debtors:

Southfield Industrial III, L.P.  
c/o Seefried Properties, Inc.  
4200 Northside Parkway, N.W.  
Atlanta, GA 30327

9. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Lease, then the Lease shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Lease.

10. Pursuant to the Order, claims arising out of the rejection of the Lease must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Lease (the "Rejection Claims Deadline").

11. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions

from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

**General Description Relating to the Lease.**

12. The Debtors entered into the Lease to provide Mirant with a duplicate computer infrastructure system (a "hotsite") in case of an emergency at Mirant's corporate headquarters in Atlanta, Georgia (the "Atlanta Headquarters"). As a hotsite, the Premises are used to back up the Debtor's trading and commercial operations and other technology to ensure the Debtor have a location to conduct their operations in the event the Atlanta Headquarters become unusable. The Debtors have also used the Premises for general storage needs.

13. The term of the Lease is October 1, 1999 to August 31, 2009. Pursuant to the Lease, the Debtors pay rent as follows:

Period	Monthly Rent	Yearly Rent
October 1, 1999 – September 30, 2002	\$9,256.80	\$111,081.60
October 1, 2002 – September 30, 2005	\$9,940.80	\$119,289.60
October 1, 2005 – September 30, 2009	\$10,700.80	\$128,409.60

**The Lease May Be Rejected.**

14. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Lease is clearly an unexpired lease, since by its terms the Lease does not expire until January 31, 2010. "This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guaranty Co. v. Old Republic National Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

**Rejection Of The Lease is Within the Debtors' Business Judgment.**

15. Rejection of a lease requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an unexpired lease is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an unexpired lease enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an unexpired lease, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

16. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)). The Debtors have determined, after due inquiry, that the Lease is burdensome to their estates and should be rejected.

17. The Debtors have determined, in their reasonable business judgment, that the Lease should be rejected as uneconomical and an impediment to their ongoing business operations. In September 2003, the Debtors entered into a "Recovery Service Agreement" with Sungard Recovery Services LP (the "Sungard Contract"). The Sungard Contract provides the

Debtors with a new hot site run directly by Sungard, so the Debtors will no longer need to lease space and establish their own hot site. The Sungard Contract is for a term of sixty (60) months, effective January 1, 2004, at a fee of \$2,445 per month.

18. The Debtors do not need two hot sites to support the computer infrastructure, trading and commercial operations at the Atlanta Headquarters. The Debtors have determined that the Sungard Contract fits their present needs better than the Lease due to the lengthy term of the Lease, the cost of the Lease, location of the Premises, and the Debtors' changing business operations. The rent differential between the Sungard Contract and the Lease will result in a savings of approximately \$350,000. Based on the foregoing, the Debtors, in their reasonable business judgment, have determined that the Lease should be rejected.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas  
March 19, 2004

HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

By     /s/    Ian T. Peck  
Robin E. Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 065222200  
Ian T. Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Craig H. Averch  
State Bar No. 01451020  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

ATTORNEYS FOR THE DEBTORS AND  
DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 19th day of March 2004.

Eric J. Taube  
Mark C. Taylor  
Hohmann, Taube & Summers, L.L.P.  
100 Congress Avenue  
Suite 1600  
Austin, TX 78701

Deborah D. Williamson  
Thomas Rice  
Cox & Smith Incorporated  
112 East Pecan Street  
Suite 1800  
San Antonio, TX 78205-1505

Howard L. Siegel  
Brown Rudnick Berlack Israels LLP  
City Place I, 185 Asylum Street  
Hartford, CT 06103-3401

Bruce R. Zirinsky  
Gregory Petrick  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, NY 10038

William R. Baldiga  
Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, MA 02111

Mark Thompson  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, NY 10017-3954

Edward S. Weisfelner  
Leslie H. Scharf  
Brown Rudnick Berlack Israels LLP  
120 West 45th Street  
New York, NY 10036

Southfield Industrial III, L.P.  
c/o Seefried Properties, Inc.  
4200 Northside Parkway, N.W.  
Atlanta, GA 30327

Paul N. Silverstein  
Andrews & Kurth, L.L.P.  
805 Third Avenue  
New York, NY 10022

Jason S. Brookner  
Andrews & Kurth, L.L.P.  
1717 Main Street  
Suite 3700  
Dallas, TX 75201

/s/ Ian T. Peck

**EXHIBIT A**

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 FORT WORTH DIVISION

U.S. BANKRUPTCY COURT,  
 NORTHERN DISTRICT OF TEXAS

**ENTERED**

TAWANA J. MARSHALL, CLERK  
 THE DATE OF ENTRY IS  
 ON THE COURT'S DOCKET

In re	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	Case No. 03-46590-DML-11
Debtors.	)	Jointly Administered

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER  
 PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE  
 AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contracts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED** that the Motion is granted; and it is further

**ORDERED** that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

**ORDERED** that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

**ORDERED** that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

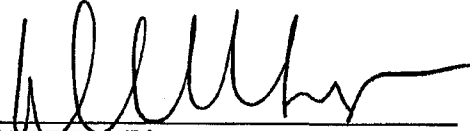
**ORDERED** that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

**ORDERED** that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

**ORDERED** that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2007



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HONORABLE D. MICHAEL LYNN  
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

**Rejection Procedures**

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re	)	
	)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,	)	
	)	Case No. 03-46590-DML-11
Debtors.	)	Jointly Administered
	)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.

§§ 101-1330, as amended (the "Bankruptcy Code").<sup>1</sup> The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

#### **RELIEF REQUESTED**

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

---

<sup>1</sup> Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

**BASIS FOR RELIEF**

5. On \_\_\_\_\_, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".

7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:  
Effective Date of Rejection:  
Parties to the Lease/Contract  
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas  
\_\_\_\_\_, 2003

HAYNES AND BOONE, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
(214) 651-5000

By \_\_\_\_\_

Robin Phelan  
State Bar No. 15903000  
Judith Elkin  
State Bar No. 06522200  
Ian Peck  
State Bar No. 24013306

-and-

Thomas E Lauria  
State Bar No. 11998025  
Michelle C. Campbell  
State Bar No. 24001828  
WHITE & CASE LLP  
Wachovia Financial Center  
200 South Biscayne Blvd.  
Miami, Florida 33131  
(305) 371-2700

**PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS-IN-POSSESSION**

**EXHIBIT “B”**  
**Part 1**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made and entered into between **Southfield Industrial III, L.P.**, a Georgia limited partnership (hereinafter referred to as the "Landlord"), and **Southern Energy, Inc.**, (hereinafter referred to as the "Tenant").

**WITNESSETH:**

**1. PREMISES**

In consideration of the rents and other covenants of this Lease, Landlord hereby leases to Tenant and Tenant hereby takes the premises (herein referred to as the "Premises") containing approximately 18,240 square feet situated in 105 Southfield Parkway (herein sometimes referred to as the "Building") located in Southfield Corporate Center (herein referred to as the "Park") which is shown on the Site Plan attached as Exhibit "A" hereto. Construction drawings (herein referred to as the "Construction Plan") of the Premises are attached as Exhibit "B" hereto, which have been signed and approved by the parties hereto. Landlord has agreed to perform the work (herein referred to as the "Landlord's Improvements") with respect to the Premises as set forth on the Construction Plan.

**2. TERM**

Subject to the terms and conditions set forth in Paragraph 11 hereof, the term of this Lease shall commence on the date (herein called the "Commencement Date") which is the earlier of (i) the 1st day of October 1999 (or, if later, the date 10 days after Landlord's Improvements have been substantially completed and Landlord has delivered written notice thereof to Tenant), or (ii) the date on which Tenant takes possession of the Premises and shall expire (unless extended if any extension is provided herein) at midnight on the 31th day of August, 2009. The initial term of this Lease and any extension thereof shall herein be referred to as the "Lease Term."

**3. ANNUAL RENT AND SECURITY DEPOSIT**

A. Tenant agrees to pay Landlord, as rent for the Premises during the initial calendar year of the Lease Term, without notice, demand, deduction of set off, the sum specified in Special Stipulation #1. The rent shall be paid in advance, in equal monthly installments per Special Stipulation #1 on the first (1st) day of each month. The payment of the rent shall commence on the Commencement Date. The payments of monthly rent shall be made to Landlord at the address set forth in Paragraph 31 hereof. The annual rent set forth in this Paragraph 3.A. shall be subject to escalation as provided in Special Stipulation #1 of this Lease. A prorated monthly installment (based on a thirty (30) day month) shall be paid in advance for any fraction of a month if the Lease Term shall begin on any date except the first day of a month or shall end on any date except the last day of a month.

B. Intentionally Deleted

C. On the date of the execution of this Lease, Tenant shall pay to Landlord the first monthly installment of annual rent in the amount of \$9,120.00 receipt of which Landlord hereby acknowledges. Within thirty (30) days after termination of this Lease, Landlord shall return to Tenant the remaining unapplied portion of the security deposit.

**4. SIGNS**

Tenant shall have the right to install on the exterior of the Building, at Tenant's sole cost and expense, a sign which has been approved by Landlord. The exact location of the sign will be determined by Landlord. The sign will be of standard uniform design determined by Landlord.

  
INITIAL

The color of the background of the sign shall be as selected by Tenant from choice or choices provided by Landlord.

If the Premises have a rear service door (intended for deliveries or shipping), Tenant shall have the right to install, at its sole cost and expense, a standard sign of uniform design determined by Landlord.

Tenant shall have the right to place lettering upon the plate glass entrance doors or on the plate glass windows of the Premises, at Tenant's sole cost and expense; provided, however, that the lettering will not exceed six (6) inches in height and shall be subject to the approval of Landlord.

Tenant agrees that no other signs of any description shall be erected or painted in or about the exterior of the Premises.

## 5. USAGE AND INSURANCE

A. The Premises shall be used only for the purpose of a disaster relief recovery center and business offices, and for such other lawful purposes as may be incidental thereto and approved by Landlord. Tenant shall, at its sole cost and expense (i) obtain any and all licenses and permits necessary for any such use and (ii) comply with all governmental laws, ordinances, regulations, orders and directives applicable to the use or misuse of the Premises. Tenant shall not receive, store or otherwise handle any product, material or merchandise which is explosive or highly inflammable; or permit the Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous. The Premises shall not be used for any illegal purposes, in violation of any regulation of any governmental body or in any manner to create any nuisance. If the insurance premiums on the Building in which the Premises are located are increased due to Tenant's use of the Premises, Tenant shall pay to Landlord the amount of such increase in premium.

B. Tenant shall, at its sole cost and expense, obtain and maintain during the Lease Term the following insurance with respect to the Premises:

(i) Commercial general public liability insurance (with contractual liability endorsement) with coverage in amounts of not less than \$1,000,000.00 with respect to property damage, bodily injury, personal injury or death to one or more persons; and

(ii) Contents insurance on Tenant's goods, fixtures and inventory in or on the Premises.

Each of the insurance policies required under B(i) above shall insure Landlord and Tenant and any designees of Landlord (including, the holder of any security deed encumbering the Premises), and contain such mortgage endorsements as requested by Landlord. Each of the insurance policies hereunder shall be written by a responsible insurance company legally permitted to do business in Georgia, be in form and substance satisfactory to Landlord and contain endorsements that such insurance may not be canceled or materially altered by the insurance company except upon thirty (30) days prior written notice to Landlord and any such designee.

C. Upon taking or accepting of possession of the Premises, and thereafter within thirty (30) days of the renewal of such policy, Tenant shall deliver to Landlord either a duplicate original or a certificate of insurance of all policies required to be carried by Tenant hereunder, together with evidence satisfactory to Landlord of the full payment of the premiums therefor.

D. Landlord acknowledges and agrees that Tenant's fire and extended coverage insurance may provide for a deductible of up to \$100,000, and Tenant's commercial general liability coverage may provide for a deductible of up to \$500,000, provided that Southern Company's self-insurance covers the deductibles.

## 6. COMMON AREAS

Tenant shall have the non-exclusive right (in common with Landlord and the other tenants in the Park) to use such portions of the Park which are designated by Landlord from time to time as "common areas", subject to the Building Rules and Regulations attached as Exhibit "C" hereto and such other rules and regulations as Landlord may from time to time impose, including the designation of specific areas in which cars owned by Tenant, its employees and agents must be parked. Tenant agrees to abide by such rules and regulations and to use its best efforts to cause its employees, agents, customers and invitees to conform thereto. Landlord may at any time temporarily close all or any portion of the common areas of the Park to (i) make repairs or changes therein, (ii) prevent the acquisition of public rights in such areas or (iii) do such other acts in and to the common areas of the Park as in its judgement may be desirable to improve the convenience thereof. Tenant shall upon request promptly deliver to Landlord the license numbers of the cars operated by Tenant and its employees. Tenant shall not interfere with the rights of the Landlord or any other tenants in the Park to use any portion of the common areas of the Park.

The parties hereby agree that Tenant shall have access with all other tenants to the parking areas, driveways, walks, landscaped areas and service areas appurtenant to the Premises. During the term of this Lease, Tenant will have the use of fifty parking spaces.

## 7. SERVICES

A. Tenant shall pay for all public and other utilities and related services rendered or furnished to the Premises during the Lease term, including, but not limited to, gas, heat, light, power, telephone, sprinkler charges and other utilities and services used on or provided to the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto and any cost to maintain and repair the facilities and equipment used in providing such utilities and services. In the event any utility services are not separately metered to tenant but are metered to the Building in which the Premises are located, Tenant shall pay a reasonable portion of all utility charges (as determined by Landlord) provided to the Building.

B. Landlord shall not be liable for any interruption, discontinuance or failure of any utility service furnished to the Premises. Any interruption, discontinuance or failure of any utility service to the Premises shall not constitute an eviction (constructive or otherwise) or give Tenant the right to claim any damages against Landlord or any right to withhold, reduce or abate the payment of the annual rent or any other sum due Landlord under the terms of this Lease.

C. Tenant, at its sole cost, shall provide its own janitorial services to be performed in the Premises during the Lease Term.

## 8. ADDITIONAL CHARGES

A. Commencing on October 1, 1999, and continuing on each October 1 of each year thereafter during the Lease Term, Tenant agrees to pay, as the rent for such year, the amount specified in Special Stipulation #1. The installments of the rent shall be adjusted accordingly and shall be due and payable, in advance, on the first (1st) day of each month of such calendar year.

B. Commencing on the Commencement Date and continuing thereafter during the Lease Term, Tenant agrees to pay to Landlord annually on or before seven (7) days after notice, Tenant's pro rata share of the amount by which (i) the sum of (a) the real estate ad valorem taxes, governmental and public charges and special and general assessments, including all costs and fees reasonably incurred by the Landlord in contesting same, (herein collectively referred to as the "Taxes") imposed against the real property within the Park and owned by Landlord for each calendar year during the Lease Term, and (b) the premium cost (herein collectively referred to as the "Premiums") for the fire and casualty insurance and general liability insurance on all buildings (including the Building in which the Premises are located) located in the Park and

owned by Landlord for any calendar year during the Lease Term, exceeds (ii) the product (herein called the "Tax and Insurance Stop") obtained by multiplying (A) \$0.35 per square foot by (B) the total number of square feet of all buildings (including the Building in which the Premises are located) located in the Park and owned by Landlord. Landlord shall set forth in its notice to Tenant the total amount of the excess of the Taxes and Premiums for such calendar year over the Tax and Insurance Stop and Tenant's pro rata share thereof.

C. Commencing on the Commencement Date and continuing thereafter during the Lease Term, Tenant agrees to pay to Landlord on or before seven (7) days after notice (which notice shall not be given more frequently than monthly), Tenant's pro rata share of any and all water and sanitary sewer charges incurred by Landlord for the Building in which the Premises are located.

D. INTENTIONALLY DELETED.

E. Commencing on the Commencement Date and continuing thereafter during the Lease Term, Tenant agrees to pay Landlord, on or before seven (7) days after notice (which notice shall not be given more frequently than monthly) Tenant's pro rata share of all costs and expenses (the "common area charges") incurred by Landlord during the Lease Term in operating, managing, securing, lighting, repairing and maintaining the common areas of the Park located adjacent to buildings managed by Landlord in the Park; including, but not limited to, maintenance and repair, painting, cleaning, landscaping, snow and ice removal, resealing or resurfacing the parking areas, utility expenses for the common area, security, water and sewerage charges with respect to the common areas of the Park, maintenance of signs, liability insurance premiums with respect to the common areas of the Park, assessments attributable to the common areas of the Park and fees for required licenses and permits. Landlord shall set forth in its notice to Tenant the total amount of the common area charges for the period covered by such notice and Tenant's pro rata share thereof within ninety (90) days. After the end of each calendar year during the Lease Term, Landlord shall deliver to Tenant a statement prepared in accordance with sound accounting practices by Landlord's accountant, setting forth the actual costs and expenses incurred by Landlord during such year with respect to the common areas of the Park, and Tenant's pro rata share thereof, and any necessary adjustment between the parties shall be made within fifteen days of delivery of such statement. Landlord shall also deliver such statement for the calendar year within which the Lease Term expires.

Notwithstanding anything to the contrary contained in this Lease, the following items shall be excluded (or, as applicable, deducted) from the calculation of the common area charges: (A) the cost of repairs or other work occasioned by fire, windstorm or other casualty or loss in excess of the insurance proceeds therefor or by the exercise of eminent domain; (B) depreciation; (C) overhead or profit paid to Landlord, subsidiaries or affiliates of Landlord, for services on or to the common areas if and to the extent the cost therefor exceeds competitive costs for such services in comparable office parks located within twenty (20) miles of the Park were they not so rendered by Landlord, or by a subsidiary or affiliate of Landlord; (D) payments of principal, interest or other payments of any kind on any deeds to secure debt, mortgages, ground or underlying leases, or other hypothecations for security of all or any part of the common areas by Landlord; (E) Landlord's general overhead and any other expense not directly related to the common areas; (F) estate, inheritance, gift, franchise and income taxes of Landlord (except for any such tax which is levied in lieu of or in substitution for any current tax or future); (G) the costs and expenses of maintenance and operation of any parking facility in or serving the Building or the Park except to the extent they exceed any revenues for parking received from such operation; (H) all items that would be capitalized under Generally Accepted Accounting Principles as of the date hereof; (I) the cost of defending against claims in regard to the existence or release of hazardous materials or hazardous substance or any future designated hazardous materials or hazardous substances at the common areas and costs of any clean-up of any such hazardous materials or hazardous substances or future designated hazardous materials or hazardous substances; (J) costs and expenses incurred in connection with compliance with or the contesting or settlement of any claimed violation of law or requirements of law if such law is in effect and applicable to the common areas as of the commencement date and the common areas

are in violation of such law as of the commencement date; and (K) all other items for which Tenant or any other tenant, occupant or other party compensates or is required to compensate Landlord, so that no duplication of payments by Tenant or to Landlord shall occur.

F. If any governmental authority imposes upon Landlord a tax, levy, or other imposition based upon the rent received by Landlord under this Lease, Tenant shall pay to Landlord, on or before seven (7) days after notice, the amount thereof. The tax, levy, or imposition to which reference is made shall include sales, use, excise or similar tax, but shall not include capital stock, income, estate, or inheritance taxes imposed upon Landlord. The sums contemplated in this Paragraph shall be paid in addition to the sums required to be paid by Tenant pursuant to Paragraph 8B. hereof.

G. The payments required under this Paragraph 8 shall be made to Landlord at the address set forth in Paragraph 31 hereof.

H. For the purposes of this Agreement, Tenant's "pro rata share" shall be and mean a fraction, the numerator of which shall be the square feet contained in the Premises and the denominator of which shall be the square feet contained in all of the buildings (including the Building in which the Premises are located) located in the Park and owned by Landlord.

## 9. REPAIRS

A. Landlord, at its sole cost and expense, shall keep the roof, exterior walls (excluding windows, window glass, plate glass and all doors), the common areas (including, without limitation, all parking facilities and landscaped areas, stairs, all paving, curbing and walkways, and all irrigation systems), the supporting walls, structural members, and exterior portions (including, without limitation, the roof and foundation) of the Building, and the building mechanical, plumbing, the base building fire safety system (including, without limitation all necessary replacements), consistent with reasonable standards at all times during the Lease Term, in good repair and condition, reasonable wear and tear and fire, casualty and condemnation excepted. Except as expressly set forth in this Lease, Landlord shall not be required to make any other repairs, replacements, alterations or improvements to the Premises. Repairs required to be made by Landlord shall begin not more than fifteen (15) days after receipt of Landlord of written notice from Tenant requesting the need for such repair. Landlord shall not be liable to Tenant for any damage or inconvenience, and Tenant shall not be entitled to any abatement or reduction of rent, by reason of any repair, alteration or addition made by Landlord under this Lease.

B. Tenant, at its sole cost and expense, shall make all repairs, replacements, alterations and maintenance to the interior, nonstructural portions of the Premises which are not expressly required to be made by Landlord pursuant to this Lease, including, but not limited to, windows, doors, and glass and any repairs, replacements, damage or injury (other than reasonable wear and tear and fire, casualty and condemnation) to all or any part of the Premises caused by Tenant or its agents, employees, invitees or licensees. In addition, Tenant shall obtain and maintain a heating, ventilating and air conditioning system maintenance contract with a contractor and with levels of coverage reasonably acceptable to Landlord.

C. Tenant shall not commit or allow any waste or damage to be committed on or to any portion of the Premises. At the expiration or termination of this Lease, Tenant shall deliver the Premises to Landlord in good order, condition and repair, ordinary wear and tear and fire, casualty and condemnation excepted. The cost and expense of any repair necessary to restore the Premises to such order, condition and repair shall be paid by Tenant; and, if Landlord undertakes to perform such restoration, Tenant shall reimburse Landlord for the cost thereof on or before seven (7) days after notice.

D. In the event Tenant fails to promptly make any repairs or replacements, or perform any maintenance required to be made by Tenant hereunder and such failure continues in excess of fifteen (15) days after written notice thereof from Landlord to Tenant, Landlord, may, at its option and at Tenant's expense, make the repairs or replacements and perform the

maintenance for and on behalf of Tenant and Tenant shall, on or before seven (7) days after notice, pay to Landlord all cost and expense incurred by Landlord in making such repairs and replacements and performing such maintenance.

## 10. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

A. Tenant, at its sole cost and expense, shall promptly comply with (i) all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Premises and (ii) the rules and regulations for the Premises reasonably established by the Landlord. Landlord shall have the right at all times to modify and change the rules and regulations for the Premises in any reasonable and non-discriminatory manner as Landlord may deem advisable for the safety, care, cleanliness and preservation of good order of the Premises.

B. Except for Hazardous Material contained in products used by Tenant in de minimus quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or store any Hazardous Material in or about the Premises without Landlord's prior written consent, in its sole discretion. Tenant, at its sole cost and expense, shall operate its business in the Premises in compliance with all Environmental Requirements and shall immediately remediate any Hazardous Materials released on or from the Project by Tenant, its agents, employees, contractors, subtenants or invitees. Notwithstanding the foregoing to the contrary, Tenant shall be entitled to use and store such Hazardous Materials as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the businesses permitted hereunder, but only so long as the quantities thereof do not pose a threat to public health or to the environment and would not necessitate a "response action", as that term is defined in CERCLA, and so long as Tenant strictly complies or causes compliance with all laws, statutes, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Materials at the Premises.

The term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgements, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes petroleum (as defined in CERCLA) and any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any breach of the obligations under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, or invitees, regardless of whether Tenant had knowledge of such noncompliance. The indemnification and hold harmless obligations of Tenant shall survive any termination of this lease.

Landlord shall have access to, and a right (but no obligation) to perform inspections and tests of the Premises as it may require to determine Tenant's compliance with Environmental Requirements and Tenant's obligations under this Paragraph 30. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, as far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests

reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

## 11. LANDLORD IMPROVEMENTS

A. In the event Landlord has agreed to perform improvements on the Premises prior to Tenant's taking possession of the Premises, Landlord shall, at its expense, commence and substantially complete the construction of the Landlord's Improvements in accordance with the Construction plan on or before the date set forth in Paragraph 2 (i) hereof. Upon substantial completion of the Premises and the Landlord's Improvements in accordance with the Construction Plan, Tenant agrees to accept and take possession of the Premises. Notwithstanding anything to the contrary expressed or implied in this Lease, within thirty (30) days after the date the Premises are delivered to Tenant with Landlord's Improvements complete, Tenant shall have the right to prepare and provide to Landlord a "punch-list" of incomplete or defective items, all of which shall be promptly repaired and completed by Landlord at Landlord's sole cost and expense.

B. Landlord shall use reasonable efforts to substantially complete the Premises and the Landlord's Improvements on or before the date set forth in Paragraph 2 (i) hereof. In the event that the Landlord's Improvements have not been substantially completed and the Premises are not ready for occupancy on or before the date set forth in Paragraph 2 (i) hereof, Tenant shall notify Landlord setting forth such notice the portions of Landlord's Improvements which are not substantially complete. Landlord shall have a reasonable time after delivery of the notice in which to take such corrective action as may be necessary to complete Landlord's Improvements and notify Tenant as soon as such action has been completed. If Landlord shall be unable to deliver possession of the Premises to Tenant on or before the date set forth in Paragraph 2 (i) hereof by reason of the holding over of any tenant in possession of the Premises or for any other reason beyond the control of Landlord (including the inability of Landlord to complete the Landlord's improvements), Tenant's obligation to pay the annual rent and other charges required to be paid by Tenant hereunder shall be abated and shall not commence until possession of the Premises is delivered to Tenant. Tenant agrees to accept such abatement of the annual rent and other charges as complete and full liquidated damages and in full satisfaction for any claim against Landlord for its failure or inability to deliver possession of the Premises to Tenant on or before the such date. In the event that such possession of the Premises is not delivered to Tenant by the date set forth in Paragraph 2 (i) hereof, the term of this Lease shall be automatically extended, on a day-to-day basis, until possession of the Premises is delivered to Tenant. In the event that possession of the Premises is not delivered to Tenant on or before ninety (90) days after the date set forth in Paragraph 2 (i) hereof, Tenant may terminate this Lease in which event neither Landlord nor Tenant shall have any rights, obligations or liabilities hereunder.

C. In the event Tenant elects to take or accept possession of the Premises prior to the completion of Landlord's Improvements, Tenant agrees that prior to taking of possession it shall deliver to Landlord the certificate of insurance or duplicate original of all policies of insurance required to be carried by Tenant pursuant to the terms of Paragraph 5.B. hereof. Tenant agrees that it shall not interfere with or delay Landlord, its agents or employees, in the completion of Landlord's Improvements. Tenant shall hold Landlord harmless from and against any claim or demand arising out of any injury or death of any person or damage to property occurring in, on or about the Premises to the extent caused by or resulting from the negligence or willful misconduct of Tenant, its agents or employees during the period of Tenant's possession of the Premises prior to the date that Landlord's Improvements have been completed.

## 12. ALTERATIONS AND IMPROVEMENTS

A. Tenant shall not make or allow to be made any alterations, additions or improvements ("Alterations") in or to the Premises without first obtaining the written consent of Landlord which consent shall not be unreasonably withheld. Any alterations, additions or

improvements to the Premises made by Tenant shall be performed in a good workmanlike manner and shall at once become the property of Landlord and shall be surrendered to Landlord on the expiration or termination of this Lease; however, Landlord by notice to Tenant, may require that Tenant on the expiration or termination of this Lease, remove at Tenant's expense, any Alterations made by Tenant and restore the portion of the Premises affected thereby to a neat, orderly and safe condition.

Notwithstanding the foregoing to the contrary, Tenant shall have no obligation to obtain Landlord's consent for painting, wall papering and recarpeting nor for any Alterations or related series of Alterations if such Alteration or related series of Alterations:

- (i) are nonstructural;
- (ii) do not cause any violation of and do not require any change in any certificate of occupancy applicable to the Building;
- (iii) do not cause any change in the outside appearance of the Building, do not weaken or impair the structure of the Building and do not materially reduce the value of the Premises or the Building;
- (iv) do not affect the proper functioning of the Building mechanical utilities, systems or equipment; and
- (v) do not cost in excess of \$10,000 in any twelve month period.

B. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance on the interest of Landlord in the Premises. Tenant agrees that it shall pay or cause to be paid all sums due and payable by Tenant on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from and against any and all claims and demands based on or arising out of liens or claims for liens against the Premises or the right, title and interest of Landlord in the Premises and any actions, suits and proceedings in connection with any such claim or demand and any and all loss, cost, damage, liability and expense incurred by Landlord in connection therewith, including attorney's fees and costs of litigation.

### 13. CONDEMNATION

A. In the event all or a substantial portion of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by private purchase in lieu thereof (herein collectively referred to as a "Taking") and the Taking would prevent or materially interfere with the use of the Premises for the purpose for which they are then being used, this Lease shall terminate and the rent shall be abated during the unexpired portion of the Lease Term effective on the date the condemning authority takes possession of the Premises.

B. In the event a portion of the Premises shall be subject to a Taking and this Lease is not terminated as provided in the Paragraph 13.A., Landlord may, at its sole and exclusive option, restore and reconstruct the Building in which the Premises are located and any other improvements situated on the Premises to the extent necessary to make the Premises tenantable. The rent payable under this Lease for the unexpired portion of the Lease Term shall be adjusted for the unexpired portion of the Lease Term to such an extent as may be fair and reasonable under the circumstances.

C. In the event of any Taking of all or a portion of the Premises, Landlord shall be entitled to receive all of the award made in connection with such condemnation proceeding, including, without limitation, any award for the value of the unexpired term of this Lease; provided, however, that notwithstanding the foregoing to the contrary, Tenant shall have the right to claim and receive a separate award, or a portion of any single award, in any condemnation proceeding, action or ruling relating to the Building for Tenant's moving expenses, trade fixtures, personal property, loss of goodwill and the unamortized value of leasehold improvements in the Premises actually paid for by Tenant. Landlord and Tenant agree to cooperate with each other in order to permit the making of such awards to each, or, if separate awards are not legally payable or

are not actually made, then to permit the allocation of any single or lump-sum award as their respective interest therein appears. Tenant shall not be entitled to receive any award for the loss of its leasehold advantage.

#### 14. FIRE AND CASUALTY

A. In the event (i) the Premises are totally destroyed or partially damaged by fire, tornado or other casualty, Tenant shall immediately notify Landlord. In the event the Premises are partially damaged and restoration thereof cannot, in Landlord's reasonable discretion, be completed within ninety (90) days after the date of such damage or destruction or (ii) the Premises are totally destroyed, then, in either such event, Landlord, at its option and by written notice to Tenant on or before the date thirty (30) days after the date of such damage or destruction, may terminate this Lease and the rent shall abate for the unexpired portion of the Lease Term, effective as of the date of the written notice of termination.

B. In the event Landlord elects to restore the damage to the Premises (whether total or partial) (Landlord shall be deemed to have elected to restore unless Landlord gives the written notice of termination under A above within the thirty day period therein specified), Landlord shall, at its sole cost and expense, proceed with reasonable diligence to rebuild or repair the Building in which the Premises are located and other improvements within the Premises to substantially the same condition in which they existed prior to such damage. In the event all or a portion of the Premises are untenantable and the damage or destruction was not caused or contributed to by any negligent act or omission of Tenant, its agents, employees, invitees or others for whom the Tenant is responsible, the rent payable under this Lease during the period for which the Premises are untenantable shall be adjusted to such an extent as may be fair and reasonable under the circumstances. In the event that Landlord fails to complete the necessary repairs or rebuilding within one hundred and eighty (180) working days from the date of such damage or destruction, Tenant may, at its option and as its sole right and exclusive remedy, terminate this Lease by notice to Landlord whereupon all rights, obligations and liability under this Lease shall cease and terminate.

C. Notwithstanding anything contained in this Lease to the contrary, in the event the "Mortgagee", as that term is herein defined, under any "Mortgage", as that term is herein defined, requires that the insurance proceeds received by Landlord in connection with any casualty be applied to such indebtedness, Landlord shall have the right to terminate this Lease by delivering notice of termination to Tenant on or before the date thirty (30) days after the date of such damage or destruction whereupon all rights and obligations hereunder shall cease and terminate.

#### 15. CASUALTY INSURANCE

Landlord shall during the Lease Term, at its expense but subject to the terms of Paragraph 8 hereof, maintain a policy or policies of insurance issued by and binding upon an insurance company authorized to do business in Georgia insuring the Building in which the Premises are located under standard fire and extended coverage insurance policies for not less than eighty percent (80%) of the full insurable value thereof. Landlord shall not be obligated to insure any furniture, equipment, machinery, goods or supplies which Tenant may bring upon the Premises or any additional improvements which Tenant may install or place in the Premises.

#### 16. WAIVER OF SUBROGATION

Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant hereby waive and release each other from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers, and employees for any loss or damage that may occur to the Premises and Building, improvements to the Building in which the Premises are located, or personal property (building contents) within the Building, by reason of fire, the elements or any other cause which could be insured against under the terms of standard fire and extended coverage insurance policies regardless of cause or origin, including negligence of

Landlord or Tenant and their agents, officers and employees as the case may be. Landlord and Tenant each agree to give to their respective insurance companies which have issued policies of fire and extended coverage insurance, written notice of the terms of the mutual waivers contained in this Paragraph and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers contained in this Paragraph.

#### **17. HOLD HARMLESS**

Landlord shall not be liable to Tenant, its employees, agents, invitees, licensees or visitors, or to any other person for any injury to person or damage to property on or about the Premises caused by the negligence or misconduct of Tenant, its agents, servants or employees, or by any other person entering the Premises under express or implied invitation by Tenant (collectively, "Tenant's People"), or caused by the Building and improvements located on the Premises being out of repair or in disrepair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Premises or due to any other cause whatsoever. Except as otherwise provided in Paragraph 16, Tenant agrees to indemnify and hold harmless Landlord from and against any claim or demand arising out of any such damage or injury caused by the negligence or misconduct of Tenant's People and any action, suit and proceeding in connection with any such claim or demand and any and all loss, cost, damage, liability and expense incurred by Landlord in connection therewith including attorney's fees and costs of litigation. Any liability insurance which may be carried by Landlord or Tenant with respect to Premises shall be for the sole benefit of the party carrying the insurance and under its sole control.

#### **18. QUIET ENJOYMENT**

Landlord represents to Tenant that it has full right and authority to execute and deliver this Lease and that Tenant, upon payment of the rents and performing each of the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term without hindrance by Landlord.

#### **19. LANDLORD'S RIGHT OF ENTRY**

Landlord shall have the right, at all reasonable hours, to enter the Premises for the purpose of (i) inspecting or making repairs, alterations or additions required to be made by Landlord hereunder and (ii) determining Tenant's use of the Premises or if any default has occurred under this Lease. In the event of an emergency, Landlord may enter the Premises at any time.

#### **20. ASSIGNMENT OR SUBLEASE**

Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations in the Building and this Lease. Tenant shall not assign this Lease or sublet any part of the Premises without the prior written consent of Landlord which consent shall not be unreasonably withheld. In the event Tenant desires to accept an offer to assign and/or sublet the Premises and makes a written request to Landlord to consent to such proposed assignment or subletting of the Premises, a written request to Landlord to consent to such proposed assignment or subletting of the Premises, Landlord shall notify Tenant within the ten (10) days after receipt of such notice whether Landlord consents to such assignment or subletting. The failure of Landlord to give notice within such ten (10) day period shall be deemed to be the consent of Landlord to such assignment or subletting. In the event of any approved assignment or subletting, Tenant shall nevertheless at all times, remain fully responsible and liable for the payment of the rent and for compliance with all of its other obligations, provisions and covenants under this Lease. Landlord's consent shall neither be necessary nor required in connection with an assignment or sublease to any firm, corporation, partnership or other entity now or hereafter controlled by, in control of or under common control with Tenant, or into which, or with which, Tenant shall merge or consolidate, or which shall acquire all or substantially all of the assets of

Tenant. Tenant agrees to provide to Landlord written notice of such an assignment or sublease within thirty (30) days after the occurrence thereof.

Landlord acknowledges and agrees that the following are permitted to use and occupy the Premises (so long as such use and occupancy complies with current zoning): (i) contractors, attorneys, travel agents, brokers and others from time to time working at the Premises (whether temporarily or permanently) at the request of Tenant (whether or not employed by Tenant); and (ii) employees of any company or entity controlled by, controlling or under common control with Tenant.

## 21. LANDLORD'S LIEN

INTENTIONALLY DELETED.

## 22. HOLDING OVER

In the event Tenant holds over after the expiration or termination of this Lease, Tenant shall be a tenant at will and all of the terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay to Landlord, as monthly rent, an amount equal to one hundred and fifty percent (150%) of the monthly rent which would have been payable by Tenant had the period during which Tenant is holding over been a part of the Lease Term. Tenant agrees to vacate and deliver the Premises to Landlord upon Tenant's receipt of notice from Landlord to vacate. The rent payable during the hold over period shall be payable to Landlord on or before seven (7) days after notice. No holding over by Tenant, whether with or without the consent of Landlord, shall operate to extend the Lease Term.

## 23. DEFAULT BY TENANT

The following events shall be deemed to be events of default by Tenant under this Lease:

A. Tenant shall fail to pay any installment of annual rent when due and such failure shall continue for a period of five (5) days after written notice thereof from Landlord to Tenant; or

B. Tenant shall fail to pay any payment or charge with respect to taxes, insurance premiums, sewer and water charges or common area expenses required to be paid by Tenant hereunder and such failure shall continue for a period of seven (7) days after notice of non-payment from Landlord; or

C. The entry of a decree or order for relief by a court having jurisdiction of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

D. The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of its property, or the making of any assignment for the benefit of creditors, or the failure of Tenant generally to pay its debts become due, or the taking of any action by Tenant in furtherance of any of the foregoing; or

E. Tenant shall fail to comply with or perform any other term or provision of this Lease and such failure shall not be cured within twenty (20) days after written notice thereof to the Tenant (provided, however that no event of default shall occur if such failure is of such a nature that is susceptible to cure but it cannot be cured in the exercise of due diligence within

such twenty (20) day period, and Tenant commences to cure such failure within such time period and thereafter diligently prosecutes such cure to completion).

#### 24. REMEDIES FOR TENANT'S DEFAULT

Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies without further notice or demand whatsoever.

A. Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or past due installments of the rent, enter upon and take possession of the Premises and remove Tenant and any other person who may be occupying the Premises or any part thereof without being liable for prosecution of any claim of damages therefor. Tenant agrees to pay to Landlord, on or before seven (7) days after notice, the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

B. Enter upon and take possession of the Premises and remove Tenant and any other persons who may be occupying the Premises or any part thereof, without being liable for prosecution of any claim for damages therefor, and relet the Premises and receive the rent therefor. Tenant agrees to pay to Landlord, on or before seven (7) days after notice, any deficiency that may arise by reason of such reletting.

C. Enter upon the Premises without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to reimburse Landlord, on or before seven (7) days after notice, for any costs, fees, expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be Liable for any damages resulting to Tenant from such action, whether caused by the negligence of Landlord or otherwise.

D. Declare all current and future rent (discounted as of the date of such default to its present value using the "prime rate" charged by Bank South, N.A. for short term (ninety (90) day) unsecured loans made to preferred customers) immediately due and payable; provided, however, that such payments shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment in advance of the rent for the remainder of the term of this Lease. Upon making such payment, Tenant shall receive from Landlord all rents received by Landlord from other tenants on account of said Premises reduced by Landlord's costs of collection, including without limitation, attorney's fees, in obtaining payment from Tenant or any other tenant on reletting during the term of this Lease; provided, however, that the monies to which the Tenant shall so become entitled shall in no event exceed the entire amount payable by Tenant to Landlord under the preceding sentence of this subparagraph.

E. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the breach by Tenant of any of the terms, provisions and covenants contained herein. No waiver by Landlord of any specific violation of or breach by Tenant of any of the terms, provisions and covenants contained herein shall be deemed or construed to constitute a waiver of any other violation of or breach by Tenant of any of the terms, provisions and covenants contained herein. Landlord's acceptance of the payment of rent (or portions thereof) or any other payments hereunder after the occurrence of and during the continuance of an event of default (or with knowledge of a breach of any term or provision of this Lease which with the giving of notice or the passage of time, or both, would constitute an event of default) shall not be construed as a waiver of such default. Forbearance by Landlord to enforce one or more of the remedies herein provided upon the occurrence of an event of default shall not be deemed or construed to constitute a waiver of such default. No act or omission by Landlord or its agents during the Lease Term shall be deemed an acceptance of the surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid

unless in writing and signed by Landlord. From and after the occurrence of any event of default, Tenant shall be prohibited from removing any fixtures, personal property, or inventory from the Premises without the prior written consent of Landlord.

F. Landlord shall not be required to relet the Premises or exercise any other right granted to Landlord hereunder nor shall Landlord be under any obligation to minimize or mitigate Tenant's loss as a result of Tenant's default.

## **25. LATE CHARGES**

In the event Tenant fails to pay any installment of rent hereunder or any other payments required to be paid to Landlord pursuant to the terms of this Lease on or before seven (7) days after the due date thereof, Tenant shall pay to Landlord a late charge in an amount equal to five percent (5%) of such installment or payment. The failure by Tenant to pay such amount shall be an event of default hereunder. The provisions for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

## **26. ATTORNEY'S FEES**

If in connection with the occurrence of an event of default by Tenant under this Lease it shall become necessary or appropriate for Landlord to employ or consult with an attorney concerning or regarding any of Landlord's rights or remedies hereunder and Landlord consults with or engages an attorney regarding the enforcement of this Lease, the collection of any rent due or to become due or the recovery of the possession of the Premises, Tenant agrees to pay Landlord any reasonable attorney's fees actually incurred by Landlord in connection with such default for the services of the attorney, whether suit is actually filed or not.

## **27. TENANT ESTOPPEL CERTIFICATE**

Upon taking possession of the Premises and periodically thereafter during the Lease Term, Tenant shall, on or before ten (10) days after notice from Landlord, deliver to Landlord a letter certifying (i) the Commencement Date, (ii) if such be the case, that the Premises and the Landlord's Improvements have been completed in accordance with this Lease, (iii) if such be the case, that Tenant is in possession of the Premises, (iv) the date to which the annual rent and all other sums required to be paid by Tenant hereunder have been paid, (v) that Tenant has no knowledge of any default by Landlord under this Lease or stating those claimed by Tenant, and (vi) to such other items as the Mortgagee or any prospective purchaser may reasonably require.

## **28. RIGHTS OF MORTGAGE**

A. Tenant agrees not to vacate the Premises or unless otherwise expressly provided herein, to terminate this Lease by reason of (i) any default or breach by Landlord of any provision of this Lease or (ii) by reason of the condition or state of repair of the Premises. No surrender of the Premises or any part thereof by delivery of keys or otherwise shall operate to terminate this Lease unless and until expressly accepted in writing by Landlord.

B. In the event Tenant shall have the right to terminate this Lease, Tenant shall not exercise any such right (other than Tenant's termination rights in connection with damage, destruction or condemnation) until it shall have first given written notice to Landlord and the holder (herein called the "Mortgagee") of any first mortgage (herein called the "Mortgage") covering the Land of which the Premises are a part (if the name and address of the Mortgagee shall previously have been furnished to Tenant) specifying in such notice the acts or omissions giving rise to Tenant's right to terminate, and a reasonable period of time for remedying such act or omission shall have elapsed after receipt of such notice by the Mortgagee during which time Landlord and the Mortgagee, or either of them, their agents or employees, shall be entitled to enter the Premises and do therein whatever may be necessary to remedy such act or omission.

C. This Lease is and shall be automatically subject and subordinate to the Mortgage and to any and all advances to be made thereunder and to all renewals, modifications and extensions thereof. It is the intention of Landlord and tenant that the foregoing subordination shall be self-operating without any further agreement of the Tenant; provided however that the foregoing agreement of Tenant is expressly conditioned upon the holder or holders of each such Mortgage executing and delivering to Tenant agreements in recordable form between the holder of such Mortgage, and Tenant, executed and acknowledged by such holder, in form reasonably satisfactory to Tenant, whereunder such holder agrees:

(i) that so long as no circumstances exist which would entitle Landlord to terminate this Lease under the provisions of this Lease, said holder will not at any time join Tenant as a party-defendant in any action or proceeding to terminate Landlord's right to possession or to foreclose such Mortgage or any extension, renewal, consolidation or replacement of same, and the Term shall not be terminated or modified in any respect whatsoever, and Tenant's right of possession to the Premises and its other rights arising out of this Lease will all be fully recognized and protected by said holder and shall not be disturbed, canceled, terminated or otherwise affected by reason of such Mortgage or any action or proceeding instituted to terminate Landlord's right to possession or any action or proceeding instituted by said holder to foreclose such Mortgage or any extension, renewal, consolidation or replacement of same.

With respect to any Mortgage currently affecting the Premises, if within thirty (30) days after execution of this Lease Landlord has not delivered to Tenant the agreements required under this Paragraph in recordable form between the holder of such Mortgage, Landlord and Tenant, executed and acknowledged by Landlord and each such holder, then, in such event, Tenant shall have the right at any time thereafter until such an agreement is so delivered to cancel and terminate this Lease by notifying Landlord of its election so to do, and upon the giving of such notice this Lease shall terminate and end and Tenant shall thereupon be released from and relieved of all further obligations hereunder, Landlord shall pay to Tenant all costs and expenses incurred by Tenant as a result of such failure of Landlord.

D. In the event of the exercise of the power of sale or deed in lieu of foreclosure under the Mortgage, Tenant agrees to attorn to and recognize the purchaser, at such sale, as landlord under this Lease. The purchaser at such sale shall not be liable for any act or omission of any prior landlord or subject to any offsets or defenses which Tenant may have against any prior landlord. Tenant agrees that, if any party succeeding to the interest of Landlord requires a separate agreement regarding the matters contemplated in this Paragraph, Tenant shall promptly, upon request, enter into any such attornment agreement.

## 29. SUCCESSORS AND ASSIGNS

This Lease shall be binding on and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and permitted assigns.

## 30. ENTIRE AGREEMENT

This Lease contains the entire agreement of the parties and there are, and were, no verbal representations, understandings, stipulations, agreements or promises pertaining to this Lease and not incorporated in this Lease. It is likewise agreed that this Lease may not be altered, waived, amended or extended except by an instrument in writing, signed by both Landlord and Tenant.

## 31. NOTICES

A. Any payments required to be made by Tenant to Landlord shall be paid to Landlord at the address set forth below, or at any other address within the United States as Landlord may specify from time to time by written notice.

B. Any notice, approval or other communication which may be required or permitted to be given or delivered hereunder shall be in writing and shall be deemed to have been given,

delivered and received if mailed or delivered to the party at the address set forth below (i) as of the date when the notice is personally delivered and/or (ii) if mailed, in the United States mail, certified, return receipt requested, as of the date which is three (3) days after the date of the postmark on such notice and/or (iii) if delivered by courier or express mail service, telegram or mailgram where the carrier provides or retains evidence of the date of delivery, as of the date of such delivery.

**TO THE LANDLORD:**

Southfield Industrial III, L.P.  
c/o Seefried Properties, Inc.  
4200 Northside Parkway, N.W.  
Atlanta, GA 30327

**TO THE TENANT:**

Southern Energy, Inc.  
Attn: Director Administrative Services  
Suite 500  
900 Ashwood Parkway  
Atlanta, Georgia 30328

Landlord and Tenant may by notice to the other in the manner provided above, designate a different address for receiving notice under this Lease. A post office box shall not be the only notice address for a party. Any notice which is delivered to the notice address on a non-business day shall be deemed given the next business day if left at the notice address; or, if not left at the notice address, the next business day when redelivered to the notice address. The refusal to accept delivery of any notice or the absence of anyone during business hours on business days at a notice address to accept delivery shall be deemed delivery. A non-business day is a Saturday, Sunday or legal holiday generally observed in the city where notice is delivered.

**32. CORPORATE AUTHORITY**

INTENTIONALLY DELETED.

**33. BROKER DISCLOSURE**

Seefried Properties has acted as agent for the Landlord in this transaction and is to be paid a commission per separate agreement by Landlord. CB Richard Ellis has acted as agent for the Tenant in this transaction and is to be paid a commission per separate agreement by Landlord. Landlord shall indemnify and hold harmless Tenant from any and all claims, liabilities, losses, damages, costs and offenses, including but not limited to reasonable attorneys' fees, arising from the claim of any broker, finder or other person (including without limitation those persons listed above) entitled to a commission, finder's fee, or other compensation in connection with this Lease arising by, under or through Landlord. Tenant shall indemnify and hold harmless Landlord from any and all claims, liabilities, losses, damages, costs and offenses, including but not limited to reasonable attorneys' fees, arising from the claim of any broker, finder or other person (other than those persons listed above) entitled to a commission, finder's fee, or other compensation in connection with this Lease arising by, under or through Tenant. This provision shall survive the expiration or earlier termination of this Lease.

**34. MISCELLANEOUS**

A. The term "Landlord" as used in this Lease shall mean only the owner for the time being of the Building in which the Premises are located. Landlord shall have no personal liability with respect to any of the provisions of this Lease, and if Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of this portion of the Park owned by Landlord for the satisfaction of Tenant's remedies. In the event of the sale or transfer of the Park by Landlord (or any portion thereof owned by Landlord which includes the Building in which the Premises are located) all obligations of Landlord hereunder shall be transferred to the new owner of the Park or any subdivision thereof as of the date of sale of the Park (or portion thereof) and the transfer of this Lease and the assignor Landlord shall no obligation or liability, as landlord, from and after the date of the transfer of this Lease.

B. All obligations of Tenant hereunder which are not fully performed as of the expiration or termination of this Lease shall survive the expiration or termination of this Lease,

including without limitation, all payment obligations with respect to taxes, insurance premiums, sanitary and water charges, common area expenses and all obligation concerning the condition of the Premises. Upon the expiration or termination of this Lease and prior to Tenant vacating the Premises, Tenant shall pay to Landlord the actual cost incurred by Landlord to (i) make repairs to the Premises which are the obligation of Tenant under this Lease, and (ii) pay the obligations of Tenant for real estate taxes, insurance premiums, sanitary and water charges and common area expenses for the year in which the Lease expires or terminates. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant and Tenant shall be liable for any additional costs therefor and shall pay to Landlord, on or before seven (7) days after notice, any such additional costs. Any portion of the estimated payment in excess of the actual costs shall be returned to Tenant after all such obligations have been determined and satisfied. Any security deposit held by Landlord shall be credited against the amount payable by Tenant under this Paragraph.

C. This Lease shall be governed and construed in accordance with the laws of the State of Georgia and, if any provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby.

D. Time is of the essence with respect to this Lease.

E. Exhibits "A", "B", "C" and "D" attached hereto are by this reference incorporated herein and made a part hereof.

F. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant and no estate shall pass out of or be conveyed by Landlord. Tenant has only a usufruct which is not subject to levy and sale and is not assignable.

G. There are Special Stipulations attached to this Lease which are by this reference incorporated herein and made a part hereof. To the extent of any inconsistency between the terms and provisions in the body of this Lease and the terms and provisions of the Special Stipulations, the terms and provisions of the Special Stipulations shall control.

### **35. RELOCATION OF PREMISES**

Intentionally deleted.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals  
this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

LANDLORD

Southfield Industrial III, L.P.  
a Georgia Limited Partnership

By: \_\_\_\_\_, a \_\_\_\_\_

By: *Ferdinand Seefried*  
Name: FERDINAND SEEFRIED  
Title: Vice President  
7-2-99

Witness: \_\_\_\_\_

TENANT

Southern Energy, Inc.

By: *UM Bookan*  
Title: Vice President  
Date: 7/2/99

Witness: *W. R. ...*

**EXHIBIT “B”**  
**Part 2**

# EXHIBIT "C"

## BUILDING RULES AND REGULATIONS

1. No additional locks shall be placed on the doors of the demised Premises by Lessee, nor shall any existing locks be changed unless Lessor is immediately furnished with two keys thereto. Lessor will without charge, furnish Lessee with two keys for each lock existing upon the entrance doors when Lessee assumes possession with the understanding that at the termination of the Lease these keys shall be returned.
2. Excluding Southern Energy's employees, Lessee will refer all contractors, contractor's representatives and installation technicians, rendering any service on or to the Premises for Lessee, to Lessor's approval and supervision before performance of any contractual service. This provision shall apply to all work performed in the Building including installation of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building.
3. No Lessee shall at any time occupy any part of the Building as sleeping or lodging quarters. (This is a disaster recovery center and as such Lessee must be able to be in the space 24 hours a day, seven days a week, in the event of a disaster.)
4. Lessee shall not place, install or operate on demised Premises or in any part of the Building, any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein (other than in the employee breakroom), or place or use in or about Premises any explosives, gasoline, kerosene, oil, acids, caustics, or any other flammable explosive or hazardous material without written consent of Lessor.
5. Lessor will not be responsible for lost or stolen property, equipment, money or jewelry from Lessee's area or public rooms regardless of whether such loss occurs when area is locked against any entry or not.
6. Lessee shall not at any time display a "For Rent" sign upon the demised Premises for rent.
7. Safes and other unusually heavy objects shall be placed by Lessee only in such places as may be approved by Lessor.
8. Windows facing on common area corridors shall at all times be wholly clear and uncovered (except for such signs as Lessor may approve) so that a fully unobstructed view of the interior of the demised Premises may be had from the corridors.
9. Lessor will not permit entrance to Lessee's offices by use of pass key controlled by Lessor, to any person at any time without written permission by Lessee, except employees, contractors, or service personnel directly supervised by Lessor.
10. None of the entries, passages, doors or hallways shall be blocked or obstructed, or any rubbish, litter, trash, or material of any nature placed, emptied or thrown into these areas, including any alleyways to the rear of the leased Premises, or such areas to be used at any time except for access or egress by Lessee, Lessee's agents, employees or invitees.
11. The water closets and other water fixtures shall not be used for any purposes other than those for which they were constructed. Any damages resulting to them for misuse, or the defacing or injury of any part of the Building shall be borne by the person who shall occasion it. No personnel shall waste water by interfering with the faucets or otherwise.
12. No vehicles shall or animals shall be brought into the Building.

13. No sign, tag, label, picture, advertisement, or notice (other than price tags of customary size used in marking samples) shall be displayed, distributed, inscribed, painted or affixed by Lessee on any part of the outside of the Building or of the demised Premises without the prior written consent of Lessor.
14. In the event Lessor should advance upon the request, or for the account of the Lessee, any amount for labor, materials, packing, shipping, postage, freight or express upon articles delivered to the demised Premises or for the safety, care and cleanliness of the demised Premises, the amount so paid shall be regarded as additional rent and shall be due and payable forthwith to the Lessor from the Lessee.
15. Lessee shall not do or permit to be done within the demised Premises anything which would unreasonably annoy or interfere with the rights of other Lessees of the Building.
16. During the sixty (60) days prior to the expiration of this Lease, Lessor may show the demised Premises to prospective tenants and may place upon the windows or door thereon one or more "For Rent" signs of reasonable dimensions.

SPECIAL STIPULATIONS

Attached to and Made Part of  
Lease Dated \_\_\_\_\_  
Made Between  
Southfield Industrial III, L.P.  
and  
Southern Energy, Inc.

1. The rentals described in Paragraph 3A and 8A and 8B are as follows:

<u>Period</u>	<u>Monthly Rental</u>	<u>Annual Rental</u>
October 1, 1999 - September 30, 2002	\$9,256.80	\$111,081.60
October 1, 2002 - September 30, 2005	\$9,940.80	\$119,289.60
October 1, 2005 - September 30, 2009	\$10,700.80	\$128,409.60

2. Provided no event of default by Tenant exists under this Lease at the time of the exercise thereof, Tenant shall have two - five (5) year options to extend this Lease at 95% of the then prevailing market rate, as determined as set forth below, and otherwise upon the same terms and conditions set forth in this Lease. Tenant shall provide Landlord written notice of its intent to extend this Lease at least ninety (90) days prior to the termination of the original Lease Term.
3. Should the Premises be available for occupancy at anytime prior to October 1, 1999, Tenant may occupy the Premises rent free; however, all terms and conditions of the Lease Agreement shall be in effect. Tenant shall have the right to enter the Premises September 17, 1999, for purposes of installing equipment, cabling, furniture systems, and the like, and the same shall not be deemed to be taking possession for purposes of determining the Commencement Date. Landlord shall pay to Tenant a late delivery charge of \$250 per day for every day after October 1, 1999 that Landlord has failed to deliver Premises
4. Landlord agrees to build out the Premises per the agreed upon plan done by Jennifer Kasper dated June 20, 1999. Landlord will be responsible for the first \$192,400 of the improvement costs. Any further improvements over and above the \$192,400 shall be the responsibility of Tenant. :

All such modifications shall be made by Landlord in a good and workmanlike manner, in accordance with all applicable codes, regulations, and statutes, and shall be completed on or before October 1, 1999. At no additional cost to Tenant, Landlord shall supervise the construction of such modifications in accordance with plans and specifications approved by Landlord and Tenant. Landlord shall competitively bid the construction of such modifications from a list of contractors approved by Tenant, which approval Tenant agrees not to unreasonably withhold. In the event Landlord shall fail to deliver to Tenant possession of the Premises, or shall fail to complete such modification, on or before February 1, 2000, Tenant shall have the right and option to terminate this Lease by giving written notice to Landlord at any time prior to the occurrence of both (x) delivery to Tenant of possession of the Premises, and (y) completion of such modifications. In the event of such termination, neither party shall have any further liabilities or obligations hereunder, except that Landlord shall repay to Tenant any sums paid by Tenant to Landlord under this Lease.

Notwithstanding anything to the contrary expressed or implied in this Lease, within thirty (30) days after the Commencement Date, Tenant shall have the right to prepare and provide to Landlord a "punch-list" of incomplete or defective items with respect to such modifications, all of which shall be promptly repaired and completed by Landlord at

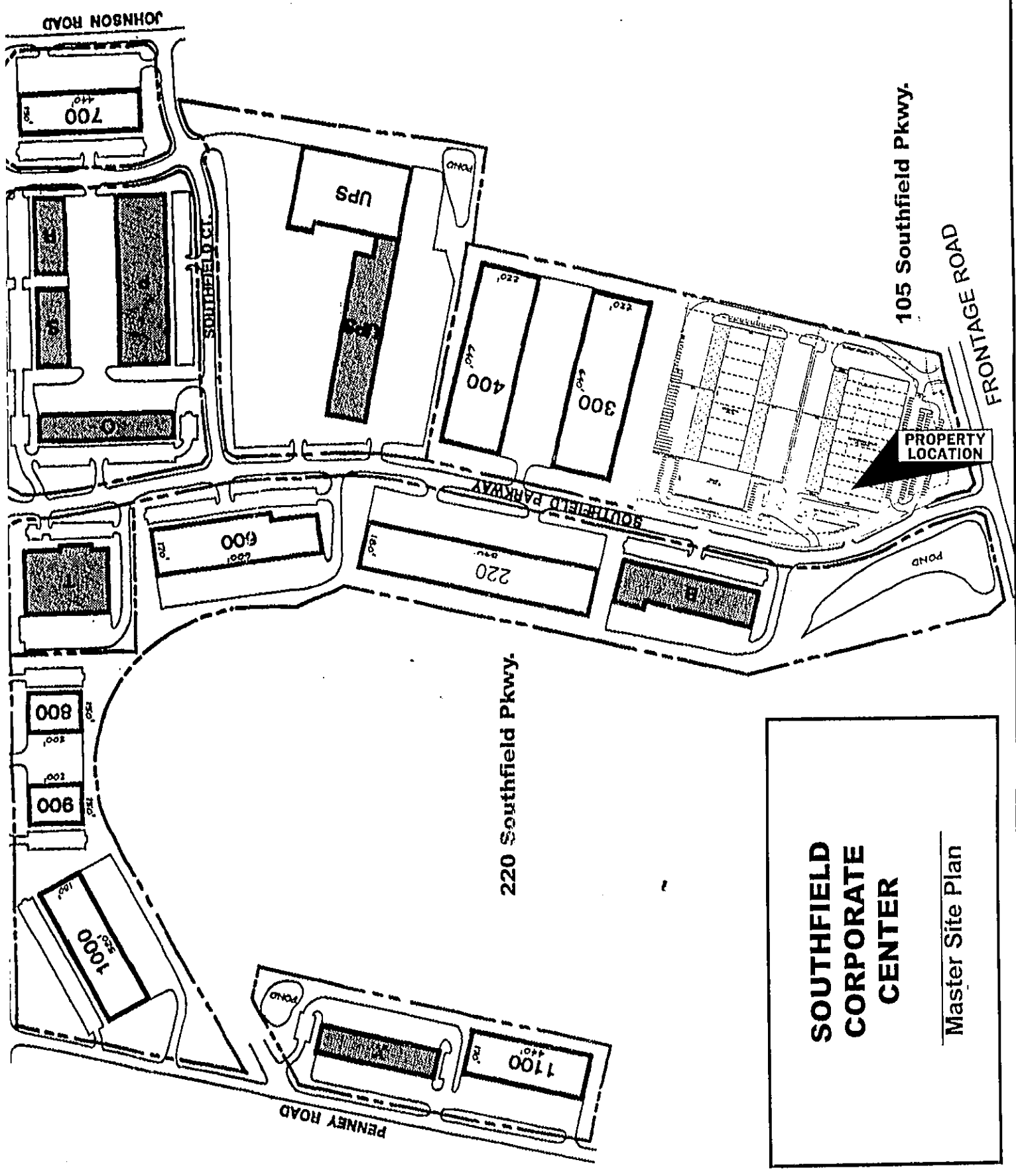
See VMB

modifications, all of which shall be promptly repaired and completed by Landlord at Landlord's sole cost and expense; and, for a period of one (1) year following the Commencement Date, Tenant shall have the right to notify Landlord of Tenant's discovery of latent defects in such modifications which shall be promptly corrected and repaired by Landlord at Landlord's sole cost and expense.

5. The prevailing market rate shall mean the annual net (excluding insurance, taxes and "pass-through" expenses similar to the "common area expenses" under this Lease) rental rate per square foot of rentable area then being charged by landlords under new leases of office space in comparable office buildings (including the Building) located within a five (5) air mile radius of the Building for space comparable to the space for which the prevailing market rate is being determined.

In the event Landlord and Tenant are unable to agree on the prevailing market rate for the Premises for the applicable extension of the Lease Term on or before the date twenty (20) days after Tenant's notice of extension of the Lease Term, then, on or before the date thirty (30) days after Tenant's notice of extension of the Lease Term, each party shall appoint and employ, at its cost, a real estate appraiser [who shall be a member of the American Institute of Real Estate Appraisers (MAI) or be a Counselor of Real Estate (a member of the American Society of Real Estate Counsellors) and who shall have at least ten (10) years of full-time commercial appraisal experience in the Atlanta area and who is not affiliated with either party hereto] to appraise and establish the prevailing market rate for the Premises. The two appraisers, thus appointed, shall meet promptly and attempt to agree on such rate. In the event one party fails to appoint an appraiser, the other designated appraiser shall independently determine the prevailing market rate for the Premises in accordance herewith. If they are unable to agree within twenty (20) days after the last of them has been appointed, they shall attempt to agree upon and designate a third appraiser meeting the qualifications set forth above within ten (10) days after the last date on which the two appraisers were given to agree. If they are unable to agree on the third appraiser, either of the parties, after giving five (5) days notice to the other, may apply to the presiding judge of the Superior Court of Clayton County, Georgia, for the selection of a third appraiser meeting the qualifications stated above. Each of the parties shall bear one-half of the cost of the appointment of the third appraiser, and each of the appraisers shall make a determination of prevailing market rate for the Premises. The appraisal that is farthest from the middle appraisal shall be disregarded and the remaining two appraisals shall be averaged in order to establish such rate; provided, however, if the low appraisal and/or the high appraisal are equidistant from the middle appraisal, all three appraisals shall be averaged. After the prevailing market rate for the Premises has been established, the appraisers shall immediately notify the parties in writing and such prevailing market rate for the Premises shall be binding upon the parties for the applicable extension of the Lease Term. In the event the prevailing market rate for the Premises has not been finally determined by the appraisers prior to the first day of the extension of the Lease Term, Tenant shall pay rent at the rate in effect immediately prior to the applicable extension of the Lease Term with appropriate adjustment to be made within thirty (30) days following conclusion of such determination.

6. Landlord acknowledges and agrees that provision of telecommunications to the Premises by fiber optic cable is critical to Tenant's business and forms material consideration for Tenant entering into this Lease. Tenant shall be responsible for the costs of bringing fiber optic cable to the Premises. Tenant shall be entitled and is hereby authorized to apply for approvals and to grant easements and agreements with respect to the Premises for such fiber optic cable utility purposes to and as may be reasonably required by any public or private utility company or other authority in order to provide service to the Premises, and Landlord agrees to cooperate with Tenant in making such applications, grants and agreements and to join in such applications, grants and agreements.

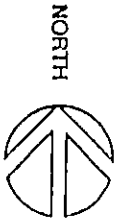


**SOUTHFIELD  
CORPORATE  
CENTER**

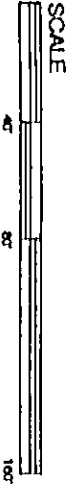
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Master Site Plan

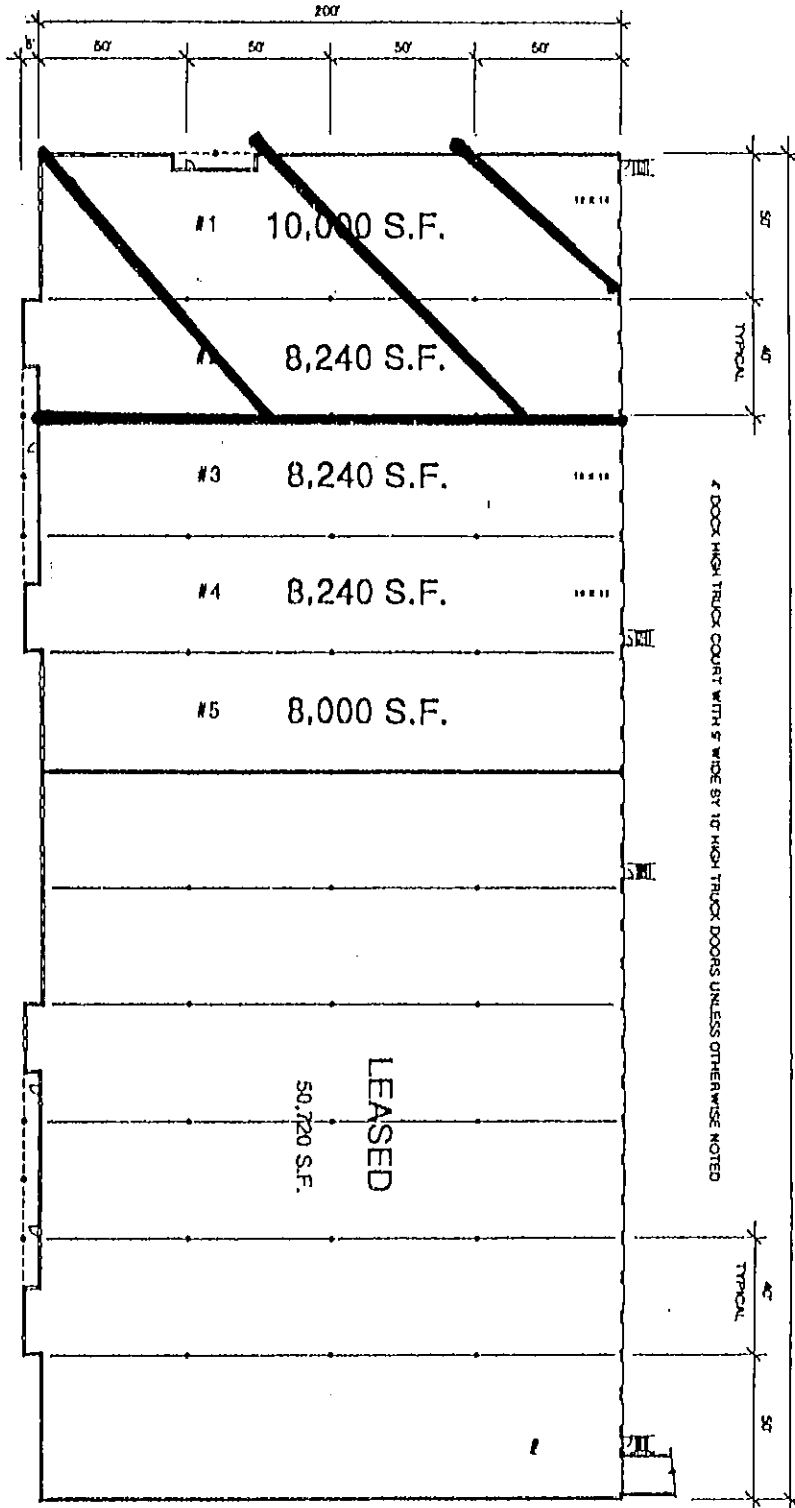
**EXHIBIT "A"**



105 SOUTHFIELD PARKWAY



TOTAL BUILDING AREA 63,449 SQ. FT.



NOT FOR CONSTRUCTION

105 SOUTHFIELD	DATE	DESCRIPTION	SEEFRIED INDUSTRIAL PROPERTIES, INC.	 <small>MAXIMUM AMERICA ARCHITECTS</small>

EXHIBIT "A"